

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION**

AARON LEE JONES,

Plaintiff,

V.

RICHARD ALLEN, et al.,

## Defendants.

Case No. 2:06-cv-986-MHT

**JOINT MOTION FOR AN ORDER PERMITTING DEFENDANTS' DISCLOSURE OF  
PROTECTED HEALTH INFORMATION UNDER HIPAA**

PLEASE TAKE NOTICE that Plaintiff and Defendants in the above-titled action, by their attorneys, jointly move this Court for an order pursuant to § 164.512(e)(1)(i) of the so-called Privacy Rule, 45 C.F.R. §§ 160, 164 (2006) (the “Privacy Rule”) enacted pursuant to the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (“HIPAA”). In support of this motion, the parties state the following:

1. On January 9, 2007, Plaintiff served Defendants with his First Request for Production of Documents (“Plaintiff’s Document Requests”), a copy of which is filed under seal as Exhibit A.
2. On February 28, 2007, Defendants served Plaintiff with Defendants’ Responses to Plaintiff’s First Request for Production of Documents (“Defendants’ Responses”), a copy of which is filed under seal as Exhibit B. Defendants’ Responses expressly adopted and incorporated the Defendants’ responses and objections to the same document requests propounded by the plaintiffs in McNair v. Allen, Case No. 2:06-cv-695-WKW and Callahan v. Allen, Case No. 2:06-cv-919-WKW. A copy of such responses and objections is filed under seal as Exhibit C.

3. Pursuant to the Privacy Rule, a “covered entity” is precluded from using or disclosing protected health information except as permitted or required by the Rule. 45 C.F.R. §164.502(a) (2007).

4. The Alabama Department of Corrections is a “covered entity” within the meaning of the Privacy Rule since it is a health care provider that transmits health information in electronic form for financial and administrative activities related to health care. See 45 C.F.R. § 160.103 (2006) (defining “covered entity”); 42 U.S.C. § 1320d-1 (2007) (the standards codified in the Privacy Rule apply to a health care provider who transmits any health information in electronic form in connection with certain financial and administrative transactions).

5. Protected health information under the Privacy Rule includes information “created or received by a health care provider” that “[r]elates to the past, present, or future physical or mental health or condition of an individual” and that either “identifies the individual” or “[w]ith respect to which there is a reasonable basis to believe the information can be used to identify the individual”, where such information is transmitted or maintained by or in electronic form or in any other form or medium. 45 C.F.R. § 160.103(b) (2006).

5. Plaintiff’s Document Requests Nos. 70 and 71, which request documents relating to pre-execution examinations and medication of executed inmates in preparation for their execution, seek health information that is protected by the Privacy Rule. See Exhibit A, Plaintiff’s Document Requests Nos. 70 and 71; 45 C.F.R. § 160.103(b) (defining “protected health information”).

6. Section 164.512(e)(1)(i) of the Privacy Rule provides that a “covered entity may disclose protected health information in the course of any judicial or administrative proceeding: (i) [i]n response to an order of a court or administrative tribunal, provided that the covered entity

discloses only the protected health information expressly authorized by such order.” 45 C.F.R. § 164.512(e)(1)(i) (2006).

7. Absent a court order, Defendants have objected to producing information that is responsive to Plaintiff’s Document Requests Nos. 70 and 71. See Defendants’ Responses to Plaintiffs’ Document Requests Nos. 70 and 71, Exhibit C.

WHEREFORE, the parties move this Court for an order permitting Defendants to disclose any protected health information responsive to Plaintiff’s Document Requests Nos. 70 and 71, and for such other and further relief as the Court deems appropriate.

Respectfully submitted,

Date: March 6, 2007

/s Heather K. McDevitt

VINCENT R. FITZPATRICK, JR.  
HEATHER K. MCDEVITT  
STEPHANIE COHEN  
Bar Numbers (SDNY):  
VF2907; HM9973; SM7006  
Counsel for Plaintiff

White & Case LLP  
1155 Avenue of the Americas  
New York, NY 10036  
Telephone: (212) 819-8200  
Facsimile: (212) 354-8113  
[vfitzpatrick@whitecase.com](mailto:vfitzpatrick@whitecase.com)  
[hmcdevitt@whitecase.com](mailto:hmcdevitt@whitecase.com)  
[stephcohen@whitecase.com](mailto:stephcohen@whitecase.com)

/s James W. Davis

TROY KING (KIN047)  
Attorney General  
J. CLAYTON CRENSHAW (CRE007)  
Assistant Attorney General  
JAMES W. DAVIS (DAV103)  
Assistant Attorney General  
JAMES R. HOUTS  
Assistant Attorney General  
Counsel for Defendants

Office of the Attorney General  
11 South Union Street  
Montgomery, AL 36130  
Telephone: (334) 242-7300  
Facsimile: (334) 353-8440  
[ccrenshaw@ago.state.al.us](mailto:ccrenshaw@ago.state.al.us)  
[jimdavis@ago.state.al.us](mailto:jimdavis@ago.state.al.us)

**CERTIFICATE OF SERVICE**

I certify that on March 6, 2007, a copy of the foregoing was filed electronically with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: J. Clayton Crenshaw, James W. Davis and James R. Houts.

/s/ Stephanie Cohen  
STEPHANIE COHEN  
Bar Number (SDNY): SM7006  
Counsel for Plaintiff

White & Case LLP  
1155 Avenue of the Americas  
New York, NY 10036  
Telephone: (212) 819-8200  
Facsimile: (212) 354-8113  
[stephcohen@whitecase.com](mailto:stephcohen@whitecase.com)

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION**

AARON LEE JONES,

Plaintiff,

V.

RICHARD ALLEN, et al.,

**Defendants.**

Case No. 2:06-cv-986-MHT

**PROPOSED AGREED ORDER PERMITTING DEFENDANTS' DISCLOSURE OF  
PROTECTED HEALTH INFORMATION UNDER HIPAA**

In accordance with 45 C.F.R. § 164.512(e) (2006) enacted pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the parties in the above-titled action, by their attorneys, hereby stipulate and agree that Requests 70 and 71 of the Plaintiff's First Request for the Production of Documents dated January 9, 2007 ("Plaintiff's Document Requests") seek information that is confidential pursuant to HIPAA. As information responsive to Plaintiff's Document Requests Nos. 70 and 71 is confidential pursuant to HIPAA, disclosure will be conducted pursuant to the following terms, restrictions and conditions:

1. Information responsive to Plaintiff's Document Requests Nos. 70 and 71 shall be deemed confidential and disclosed only in accordance with the Agreed Confidentiality Order entered by the Court on December 27, 2006.

2. Within sixty (60) days of the termination of this action, Plaintiff's counsel shall return to Defendants all protected health information disclosed in response to Plaintiff's Document Requests Nos. 70 and 71 (including all copies made) or provide Defendants satisfactory assurances that all such information has been destroyed.

3. Such information shall be used solely for the purpose of litigating this action.

DONE this \_\_ day of \_\_\_\_\_, 2007

JUDGE:

\_\_\_\_\_  
MYRON H. THOMPSON  
UNITED STATES DISTRICT JUDGE

WE ASK FOR THIS:

/s Heather K. McDevitt

VINCENT R. FITZPATRICK, JR.  
HEATHER K. MCDEVITT  
STEPHANIE COHEN  
Bar Numbers (SDNY):  
VF2907; HM9973; SM7006  
Counsel for Plaintiff

White & Case LLP  
1155 Avenue of the Americas  
New York, NY 10036  
Telephone: (212) 819-8200  
Facsimile: (212) 354-8113  
[vfitzpatrick@whitecase.com](mailto:vfitzpatrick@whitecase.com)  
[hmcdevitt@whitecase.com](mailto:hmcdevitt@whitecase.com)  
[stephcohen@whitecase.com](mailto:stephcohen@whitecase.com)

/s James W. Davis

TROY KING (KIN047)  
Attorney General  
J. CLAYTON CRENSHAW (CRE007)  
Assistant Attorney General  
JAMES W. DAVIS (DAV103)  
Assistant Attorney General  
JAMES R. HOUTS  
Assistant Attorney General  
Counsel for Defendants

Office of the Attorney General  
11 South Union Street  
Montgomery, AL 36130  
Telephone: (334) 242-7300  
Facsimile: (334) 353-8440  
[ccrenshaw@ago.state.al.us](mailto:ccrenshaw@ago.state.al.us)  
[jimdavis@ago.state.al.us](mailto:jimdavis@ago.state.al.us)